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DIVISION OF PROFESSIONAL REGULATION

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| PUBLIC MEETING MINUTES: | Adult Entertainment Commission |
| MEETING DATE AND TIME: | Thursday, April 26, 2012 at 2:00 p.m. |
| PLACE: | Cannon Building, 861 Silver Lake Boulevard Conference Room A, Dover, Delaware 19904 |
| MINUTES APPROVED: | July 26, 2012 |

MEMBERS PRESENT

James Nutter, Chairman
Maisha Britt, Public Member
Mary Kate McLaughlin, Public Member
Robb Carter, Public Member
Tiffany Trawick, Public Member

MEMBERS ABSENT

None

DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT

Andrew Kerber, Deputy Attorney General
Michele Howard, Administrative Specialist II
Kay Warren, Deputy Director
Pamela Zickafoose, Executive Director, Service Team A
Kristin Gibbons, Hearing Officer

PUBLIC PRESENT

Will Duckery, Fairways Inn Topless Tavern

CALL TO ORDER

Mr. Nutter called the meeting to order at 2:09 p.m.

REVIEW AND APPROVAL OF MINUTES

The Commission reviewed the minutes from the January 26, 2012 meeting. Mr. Kerber recommended that the minutes be amended as follows:

- Page 3, 2nd Paragraph, End of the 6th Line drafted as follows: Mr. Kerber responded that the Commission went through Joint Sunset Review two years ago, relaxing the requirements on adult entertainment establishments.
Amended to the following: Mr. Kerber responded that the Commission went through Joint Sunset Review two years ago, and the General Assembly did not consider relaxing the requirements on adult entertainment establishments.
- Page 3, 2nd Paragraph, 8th Line drafted as follows: Mr. Nutter stated that the standards were tightened rather than relaxed.
Amended to the following: Mr. Nutter stated that the standards were amended by adding new requirements for adult-oriented retail establishments.

Dr. Britt made a motion, seconded by Mr. Carter, to approve the minutes as amended. The motion passed unanimously.

UNFINISHED BUSINESS - None

NEW BUSINESS

RATIFY APPROVALS OF CERTIFICATES OF INDIVIDUAL & CRIMINAL BACKGROUND REPORTS

Troy Shawn Fischbach, Leather Central

Mr. Nutter, Dr. Britt, Ms. McLaughlin, Ms. Trawick and Mr. Carter each reviewed the Certificate of Individual and criminal background report of Mr. Troy Shawn Fischbach. Ms. McLaughlin made a motion, seconded by Dr. Britt, to ratify the approval of the Certificate of Individual and criminal background report of Troy Shawn Fischbach. The motion passed unanimously.

COMPLAINT STATUS & CONSENT AGREEMENTS

COMPLAINT STATUS

Complaint 16-06-11

Mr. Nutter reported that Complaint 16-06-11 is pending a disciplinary hearing by a DPR Hearing Officer.

Complaint 16-07-11

Mr. Nutter reported that Complaint 16-07-11 is scheduled for a hearing before a DPR Hearing Officer on May 3, 2012 at 10:00 a.m.

Complaint 16-08-11

Mr. Nutter reported that the hearing scheduled on May 3, 2012, before a DPR Hearing Officer for Complaint 16-08-11 has been cancelled. Ms. Howard stated that the Commission will review a consent agreement for Complaint 16-08-11 later in the meeting.

CONSENT AGREEMENTS

As the assigned Board Contact for Complaints 16-05-11 and 16-08-11, Mr. Nutter recused himself from the review and discussion of the proposed Consent Agreements. Likewise, as the assigned Board Contact for Complaint 16-04-11, Mr. Nutter recused himself from the review and discussion of the Hearing Officer Recommendations. Mr. Kerber asked Dr. Britt to chair the meeting while Mr. Nutter was recused.

Complaint 16-05-11, Hardwired, Schuywell Enterprises LLC, Steven R. Cornwell Jr. and Darrell W. Schuyler

Mr. Kerber summarized the proposed Consent Agreement for the Commission. Mr. Carter made a motion, seconded by Ms. McLaughlin, to accept the Consent Agreement as presented. The motion passed by a majority vote, with Mr. Nutter recused.

Complaint 16-08-11, Circles Restaurant Bar & Grill, Minh D. Tran, Lynn Tran, and Jenny Tran

Mr. Kerber summarized the proposed Consent Agreement for the Commission. Mr. Carter disclosed that he is friends with the bartender of the establishment and asked if he should recuse himself. Since there was a quorum without Mr. Carter's vote, he and Mr. Kerber agreed that he should be recused from the discussion and vote. Ms. McLaughlin made a motion, seconded by Ms. Trawick, to accept the Consent Agreement as presented. The motion passed by a majority vote, with Mr. Nutter and Mr. Carter recused.

HEARING OFFICER RECOMMENDATIONS

Complaint 16-04-11, Hak's Sports Bar, Lex-Pac Inc., and Peter Carrea

Mr. Kerber summarized the recommendations of Chief Hearing Officer, Roger Akin. Mr. Kerber stated that the report considered specific constitutional arguments that have been made. Mr. Kerber added that the report was very thorough and correct, and that he could not find fault with any of the Hearing Officer's recommendations. Ms. McLaughlin questioned and Mr. Kerber confirmed, that the recommendation to cease and desist is for adult entertainment only, and does not interfere with the respondent's right to operate a restaurant or bar. After further discussion, Mr. Carter made a motion, seconded by Ms. McLaughlin, to accept the Hearing Officer Recommendations as presented. The motion passed by a majority vote, with Mr. Nutter recused.

Ms. Howard circulated Orders for signatures. Mr. Nutter and Mr. Kerber agreed that a summary of the sanctions should be listed on all Orders.

ELECTION OF CHAIRPERSON

Pursuant to 24Del.C. § 1603(b), the Commission held an annual election for its Chairperson. Dr. Britt nominated Mr. Nutter to continue as the Board's Chairperson, seconded by Mr. Carter. Mr. Nutter accepted the nomination. There being no additional nominations, the Commission voted to reelect Mr. Nutter as its Chairperson. The vote for reelection passed by majority, with Mr. Nutter recused.

OTHER BUSINESS BEFORE THE BOARD (for discussion only)

Mr. Nutter stated that he and Mr. Kerber agree that in the future, the Commission will request that the sanctions be included on the Order page that the members sign for all Hearing Officer Recommendations and Consent Agreements. The Commission recognized Hearing Officer Kristin Gibbons, who addressed Mr. Nutter's request. Ms. Gibbons stated that when the Order is signed by the Commission members, it is attached to the Hearing Officer Recommendations (or Consent Agreement) and the entire document is mailed to the Respondent. She added that for all of DPR's professional boards, Hearing Officers use the same format for the Order (signature page), which does not include a duplicate list of sanctions. Mr. Nutter stated that he does not want there to be any question as to what the Commission's order may be. Ms. Gibbons responded that the only time there is a longer public order generated by a board/commission is when something is modified, such as the conclusions of law and/or the sanctions. Ms. Gibbons added that changing the procedure used by the Division would not be her decision to make. Mr. Carter suggested that in the future the Commission members each initial the document(s) to be attached to the Order (signature page) to confirm the document that the Commission has approved. Mr. Kerber stated that he agrees with Mr. Nutter's recommendation that the sanctions be listed on the Order for signatures. Ms. Gibbons stated that any modifications to the Order would fall on the shoulders of the Commission's DAG.

Mr. Nutter questioned the Division's process if the Commission decides to amend recommendations presented by the Hearing Officer. Executive Director, Pamela Zickafoose, responded that the Board of Nursing has reviewed Hearing Officer Recommendations for quite a few cases, and if the Board decides to change the recommended sanctions, then the Board's DAG rewrites the public Order. She added that the public Order (signature page) is attached to the Hearing Officer Recommendations as part of the document, and - for the Board of Nursing - is only signed by the Board President. Dr. Zickafoose stated that the Commission's Rules may be different and may require more than the signature of the Chairman. However, the Board of Nursing has delegated the authority to its President to sign Orders on behalf of the Board. Dr. Zickafoose reiterated that if any changes are made to the Hearing Officer's recommendations, the board/commission's DAG is responsible for drafting those changes and presenting a revised Order for signatures. The DAG should also communicate any changes to the Hearing Officer. Dr. Zickafoose explained that once the Order is signed, it is forwarded to the Division's paralegal who attaches it to the Hearing Officer Recommendations, and a copy of the entire document is sent to the Respondent and the Department of Justice. Dr. Zickafoose suggested that Mr. Kerber discuss this issue further with the Division's DAG, Allison Reardon, to find out what her preference is regarding rewriting the Order to include the list of sanctions. Dr. Zickafoose stated her opinion that it would be a duplication of effort, since the Order (signature page) is attached to the Hearing Officer Recommendations and is considered part of the document, and would be laborious for the Division's paralegal if the current procedure were to be changed. Mr. Kerber and Mr. Nutter agreed to 'see how it goes' in the future.

PUBLIC COMMENT

The Commission recognized Will Duckery of Fairways Inn Topless Tavern. Mr. Duckery questioned, and Mr. Kerber confirmed, that the businesses who signed Consent Agreements had agreed to stop operating as adult entertainment establishments. Ms. McLaughlin clarified that they may continue to operate as bars or restaurants, but must cease and desist all adult entertainment activities. Ms. McLaughlin added that if the Commission receives complaints or proof that the establishments are not complying with the orders to cease and desist all adult entertainment activities, then the Commission may order further penalties.

Mr. Duckery asked, and Ms. Howard confirmed, that his employees and independent contractors should order their criminal background reports as soon as possible for his upcoming renewal application.

Mr. Duckery questioned the due date of the application as it relates to the time restraint on photographs for Certificates of Individual. Ms. Howard explained that the statute requires that a photograph taken within 2 weeks of submitting an application must be attached to each Certificate of Individual. Once the application and Certificates of Individual are complete (including photographs), the entire document may be submitted to the Division at any time, but no later than July 1st. Ms. Howard stated that the application including all Certificates of Individual should be submitted to the Division at one time, and not piecemealed.

Mr. Kerber stated that the Commission met in January, and the Hearing Officer Recommendations for Hak's Sports Bar were received on February 1st. Mr. Kerber suggested and the Commission agreed, that in the future special meetings may be scheduled in order for the Commission to review Hearing Officer Recommendations without waiting for the next regularly scheduled quarterly meeting. Once the Hearing Officer Recommendations are submitted, the parties have 20 days to respond. Once the 20-day period has elapsed, the Commission may meet to review the Recommendations and any comments received. The meetings must be noticed to the public 7 days in advance.

Mr. Nutter stated that he spoke with Ms. Warren regarding complaint assignments. Ms. Warren confirmed that complaints must be assigned to a member of the Commission as a point of contact for the Investigative Unit. Mr. Nutter would like complaints to be assigned to other Commission members, rather than all assigned to him. Ms. Howard stated that Mr. Nutter had previously requested that all complaints be assigned to him, but she can change the complaint assignment process at any time. Ms. Howard will divide the assignments of future complaints among the Commission members. Mr. Carter questioned, and Ms. Howard explained, the purpose of complaint assignments.

NEXT SCHEDULED MEETING

The next meeting will be held on Thursday, July 26, 2012 at 2:00 p.m. in second-floor Conference Room A of the Cannon Building located at 861 Silver Lake Boulevard in Dover. Mr. Kerber advised the Commission that a substitute DAG will attend the meeting in his absence.

ADJOURNMENT

Dr. Britt made a motion, seconded by Ms. Trawick, to adjourn the meeting at 2:54 p.m. The motion passed unanimously.

Respectfully submitted,



Michele Howard
Administrative Specialist II

The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Commission members and the public in supplementing their personal notes and recall for presentations.